



Paper No. 7

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In re Application of
William T. Carden
Application No. 09/576,386
Filed: May 22, 2000
Attorney Docket No. 35672-163980

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: DECISION ON PETITION
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This is a decision on the petition under 37 CFR 1.181(a)(3), filed May 8, 2001, to accord the above-identified application a filing date of May 22, 2000.

Application papers in the above-identified application were filed on May 22, 2000. However, on August 9, 2000, the Initial Patent Examination Division mailed a "Notice of Incomplete Nonprovisional Application," notifying applicant that the application papers had not been accorded a filing date because the specification did not have at least one claim. Applicant timely filed a response to the Notice on October 10, 2000¹, and received another Notice on November 15, 2000, which was timely responded to on December 4, 2000. Applicant received an Official Filing Receipt on December 14, 2000, stating that the above-identified application had been accorded a filing date of December 4, 2000.

In the instant petition, petitioner asserts that the application was in fact filed with at least one claim on May 22, 2000. In support thereof, petitioner submitted a postcard receipt identifying this application, itemizing a specification with 38 pages including 20 claims as enclosed, bearing a United States Patent and Trademark Office date-stamp of May 22, 2000, and lacking any notation of non-receipt of any item listed.

A postcard receipt which itemizes and properly identifies the items which are being filed serves as *prima facie* evidence of receipt in the Office of all items listed thereon on the date stamped thereon by the Office. See MPEP 503.

In view thereof, the petition is **GRANTED**.

A review of the application file indicates that only pages 1-23 filed on May 22, 2000, are present. Pages 24-38 are missing. It is noted that while page 23 filed on May 22, 2000 is present in the file, it differs from the "copy" of page 23 supplied on December 4, 2000. For petitioner's information, a copy of page 23 as filed on May 22, 2000, is enclosed with this decision. Since pages 24-38 were filed on May 22, 2000, as evidenced by petitioner's postcard receipt, the application will be processed

¹ The response was timely submitted within the two month period for reply because October 9, 2000 was a federal holiday.

and examined using the copy of pages 24-38 supplied on December 4, 2000. However, page 23 as actually filed on May 22, 2000, according to the USPTO official file, will be used for processing and examination purposes, since that was the actual page filed on May 22, 2000. Petitioner may, of course, amend the specification to add any text missing on page 23 providing the amendment does not include new matter.

Given the basis for granting the petition, the petition fee has been refunded, as requested.

The application is being forwarded to the Office of Initial Patent Examination (OIPE) for further processing with a filing date of May 22, 2000, using pages 1-23 filed on May 22, 2000, and the copy of pages 24-38 supplied on December 4, 2000. Applicant will receive appropriate notifications regarding the fees owed, if any, and other information in due course from OIPE.

Telephone inquiries related to this decision should be directed to Petitions Attorney Cliff Congo at 703-305-0272.



Beverly M. Flanagan
Supervisory Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy

Enc: Page 23 of the specification filed May 22, 2000